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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re:
LODGEBUILDER, INC.,

Debtor.

WILLIAM H. AUBREY, et al.,

Appellants,

v.

BRENDA MOODY WHINERY, et al.,

Appellees.

Case No. 09-14360-lbr

Chapter 7

2:11-CV-1476 JCM (GWF)

ORDER

Presently before the court is *pro se* appellants William H. Aubrey and Brenda Todd's appeal of bankruptcy case *In re Lodgebuilder, Inc.*, 09-14103-lbr. Appellants filed an opening brief. (Doc. #13). Appellee Brenda Moody Whinery then filed an answering brief. (Doc. #15). Appellants did not file a reply brief. This court has jurisdiction pursuant to 28 U.S.C. § 158(a).

The United States Bankruptcy Court for the District of Nevada entered orders approving settlement agreements between Brenda Moody Whinery and James Lisowski, the chapter 7 trustee, in three bankruptcy cases: (1) *In re Lodgebuilder, Inc.*, 09-14103-lbr; (2) *In re Aubrey*, 09-14360-lbr; and (3) *In re Todd*, 09-14362-lbr. Aubrey and Todd filed a notice of appeal in the Lodgebuilder case; Lodgebuilder, Inc. did not file a notice of appeal. Further, appellants did not file notices of

1 appeal in the Todd or Aubrey cases.

2 Appellants argue that the bankruptcy court made several errors relating to the approval of the
3 settlement agreements. (Doc. #13). In response, appellee argues that Lodgebuilder, Inc. cannot
4 proceed *pro se*, and appellants Todd and Aubrey lack standing to pursue this appeal individually or
5 on behalf of the corporation. (Doc. #15). Accordingly, appellee asserts that the instant appeal
6 should be dismissed. (Doc. #15).

7 Pursuant to Federal Rule of Bankruptcy Procedure 8002(a), a party must file a notice of
8 appeal “within 14 days of the date of the entry of the judgment, order, or decree appealed from.”
9 FED. R. BANKR. P. 8002(a). Appellants have not filed notices of appeal in the Aubrey and Todd
10 cases (case numbers 09-14360-lbr and 09-14362-lbr). Accordingly, these cases are not properly
11 before this court, and must be dismissed. *See In re Schimmels*, 85 F.3d 416, 422 (9th Cir. 1996).

12 **Standing**

13 “It is a longstanding rule that corporations and other unincorporated associations must appear
14 in court through an attorney.” *D-Beam Ltd. Partnership v. Roller Derby Skates, Inc.*, 366 F.3d 972,
15 973-74 (9th Cir. 2004) (internal quotations omitted); *see also In re Highley*, 459 F.2d 554, 555-56
16 (9th Cir. 1972). In this case, appellant Lodgebuilder, Inc. is not represented by counsel. Further,
17 Lodgebuilder, Inc. did not file a notice of appeal; only *pro se* appellants Aubrey and Todd filed
18 notices of appeal. Therefore, Lodgebuilder, Inc. cannot appear in this matter to appeal the
19 bankruptcy court’s settlement order. *In re Highley*, 459 at 555-56.

20 Appellate standing in bankruptcy cases is analyzed under the “person aggrieved” test. *Matter*
21 *of Fondiller*, 707 F.2d 441, 443 (9th Cir. 1983). “Only those persons who are directly and adversely
22 affected pecuniarily by an order of the bankruptcy court have . . . standing to appeal that order.” *Id.*
23 at 442.

24 Prior to seeking bankruptcy relief in Nevada, appellants were defendants in an adversary
25 proceeding in Arizona bankruptcy court. (Adversary case number 2:06-ap-00911-RTB). On March
26 9, 2009, the Arizona bankruptcy court entered a judgment against Lodgebuilder, Inc., Aubrey, and
27 Todd, jointly and severally, for \$18,500,883.00. (Doc. #16, Ex. 4). Here, Lodgebuilder, Inc.’s
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1 bankruptcy schedules indicate total estate assets of approximately \$2,823,966.09. (Doc. #16, Ex.
2 16).

3 Debtors/appellants Aubrey and Todd cannot receive payment ahead of secured and unsecured
4 creditors such as the creditor trustee. 11 U.S.C. § 726(a). Therefore, there is no possibility that any
5 portion of the Lodgebuilder bankruptcy estate could go to debtors/appellants Aubrey and Todd. *See*
6 *In re C.W. Mining Co.*, 636 F.3d at 1260. Thus, Aubrey and Todd lack standing to appeal because
7 their pecuniary interests are not directly and adversely affected. *Matter of Fondiller*, 707 F.2d at
8 443.

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the appeal of bankruptcy
11 case number 09-14103-lbr, *Aubrey, et. al. v. Whinery, et. al.*, 2:11-cv-1476-JCM-GWF, be, and the
12 same hereby is, DISMISSED.

13 DATED May 22, 2012.

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16 UNITED STATES DISTRICT JUDGE
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